

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COPY

VILLAGE OF ELWOOD, WILL COUNTY,
ILLINOIS,

Petitioner,

v.

T 02 0038

CENTERPOINT INTERMODAL LLC,
BURLINGTON NORTHERN and SANTA FE
RAILWAY COMPANY and STATE OF
ILLINOIS DEPARTMENT OF
TRANSPORTATION

Respondents.

RECEIVED
JUL 23 2002

Illinois Commerce Commission
RAIL SAFETY SECTION

Petition for an order of the Illinois
Commerce Commission authorizing the
establishment of four new grade crossings
along the Industrial Park Lead track and
an associated wye connection track owned
by CenterPointe, Intermodal LLC, at
Baseline Road, Center Industrial Park
Drive, Park Road, and East Access Road
(a/k/a/ Strawn Road) in the Village of
Elwood, Will County, Illinois, directing
interim grade crossing protections and
subsequent installation of automatic
protection devices at certain of the
crossings, the construction of the
crossings proper, and dividing the
cost among the parties.

**BRIEF OF RESPONDENT, THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY**

Now comes respondent, The Burlington Northern and Santa Fe Railway Company ("BNSF"), by its attorneys, Kenneth J. Wysoglad & Associates and submits its brief with respect to the issue of appropriate warning devices at the proposed Baseline Road at grade crossing and proposed Center Industrial Park Drive at grade crossing.

ARGUMENT

BNSF will not agree to the entry of an order containing a "Stop and Flag" provision requiring its train crews to Stop and Flag all movement over the proposed Baseline Road

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at grade crossing and/or the proposed Center Industrial Park at grade crossing. BNSF objects to the entry of any such "Stop and Flag" requirement and opposes the entry of any order by the Illinois Commerce Commission which would contain a "Stop and Flag" requirement with respect to all train movements over the proposed at grade crossings.

The evidence in this case reflects that when the Industrial Park is fully constructed and developed, Baseline Road in the area of the proposed at grade crossing, would have three (3) lanes of southbound traffic consisting of a through lane, right turn lane and left turn lane. Additionally, Baseline Road will have two northbound lanes consisting of a through northbound lane and a right turn lane off of East Access Road. The crossing surface at Baseline Road would be approximately 60 feet in length. Vehicular traffic over the Baseline Road at grade crossing is projected to be approximately 8,500 vehicles per day (45% trucks), with a posted speed of either 35 mph or 25 mph. Rail traffic is projected by CenterPoint to be between 4 to 8 trains per week. (It is unclear whether the evidence is 4 to 8 trains total per week or 4 to 8 trains per week in each direction for a total of 8 to 16 total train movements over the crossing per week). The distance from the center line of the Baseline Road at grade crossing to the four-way stop intersection of Baseline Road and East Access Road is approximately 120 feet. The track, as it enters into Baseline Road is on an approximate 2° curve and intersects with Baseline Road on less than a 90° angle.

Petitioner suggests that standard reflectorized crossbuck signs would be adequate and appropriate at the Baseline Road at grade crossing. If the Illinois Commerce Commission agrees with this position there should be no need to hand flag the Baseline Road at grade crossing. Conversely, if standard reflectorized crossbuck signs are deemed inadequate by the Illinois Commerce Commission, given the high density of the projected vehicle traffic and the geometry of the crossing location, hand flagging of the crossing by

a train crew member would be ineffective and would only serve to place the train crew member at risk of being struck by a motor vehicle.

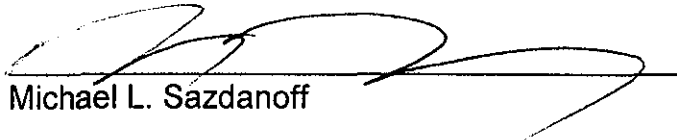
Similarly, as to the Center Industrial Park Drive proposed at grade crossing, testimony established that vehicular traffic over the subject crossing would be approximately 6,200 vehicles per day (8% trucks) with the intersection of Center Industrial Park Drive and East Access Drive being approximately 80 feet south of the proposed at grade crossing. Again, it is unclear whether train traffic over the proposed at grade crossing will be 4 to 8 trains per week or 4 to 8 trains in each direction per week.

As with the proposed Baseline Road at grade crossing, Petitioner has suggested that standard reflectorized crossbuck signs would be appropriate for the proposed Center Industrial Park Drive at grade crossing. Petitioner further suggested that the rail carrier be required to hand flag all rail movements over the proposed crossing and request that a "Stop and Flag" order be entered by the Illinois Commerce Commission. BNSF believes that a "Stop and Flag" requirement would be inappropriate and opposes the same. If standard reflectorized crossbuck signs are inadequate to warn the motoring public of the approach or proximity of a train, the Illinois Commerce Commission should not require a train crew member to hand flag the crossing as any such hand flagging will add no additional warning to the approach or movement of a train in addition to that provided by the crossbuck signs and train warning whistle or bell. Indeed, one is hard pressed to believe that a single train crew member could adequately and safely flag vehicular traffic approaching from three different directions (left hand turning traffic, right hand turning traffic and southbound traffic).

Based on the foregoing, should the Illinois Commerce Commission determine that standard reflectorized crossbuck signs are adequate and appropriate for either or both the Baseline Road proposed at grade crossing and/or the Center Industrial Park Road

proposed at grade crossing, no additional "Stop and Flag" requirement should accompany any such finding and order. BNSF of course recognizes that should the Illinois Commerce Commission find that standard reflectorized crossbuck signs are appropriate, BNSF would be required under existing Illinois Commerce Commission regulations to hand flag any shoving move over the crossbuck equipped at grade crossing. However, BNSF should not be burdened with the additional requirement to hand flag the proposed at grade crossing on engine first moves as the same will only serve to expose the railroad crew member to unnecessary risk. Additionally, should the Illinois Commerce Commission determine that automatic warning devices should be installed at the aforesaid proposed at grade crossing locations, there is no need for a "Stop and Flag" provision in any order entered by the Illinois Commerce Commission in this cause.

KENNETH J. WYSOGLAD & ASSOCIATES



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PROOF OF SERVICE

Michael L. Sazdanoff, being first duly sworn on oath, deposes and says that on the 18TH day of JULY, 2002, he caused to be served, a true and correct copy of **BRIEF OF RESPONDENT, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY** upon:

Mr. Edward P. Graham
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by depositing same in the U.S. Mail depository located at Adams and Clinton Streets, Chicago, Illinois in an envelope(s) with first-class postage, prepaid.

